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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/870,377	05/30/2001	Nick J. Pudar	GP-300259	7233
60770 7590 06/30/2011 General Motors Corporation c/o REISING ETHINGTON P.C. P.O. BOX 4390 TROY, MI 48099-4390			EXAMINER MYHRE, JAMES W	
			ART UNIT 3682	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



1 Claim 26 is typical of the claims on appeal:

2 26. A radio system for a vehicle to  
3 provide broadcasted radio programming and  
4 advertising content to an occupant of the vehicle,  
5 comprising:

6 a vehicle radio having an input for receiving  
7 audio data and at least one output for providing  
8 audio signals representative of the received audio  
9 data;

10 a radio broadcast receiver having an antenna  
11 for receiving two or more radio broadcast streams,  
12 with a first one of the radio broadcast streams  
13 including radio advertisements and a second one of  
14 the broadcast streams including audio content that  
15 contains intermittent advertising slots each  
16 identified by a marker contained with that  
17 broadcast stream, the radio broadcast receiver  
18 being coupled to the input of the vehicle radio to  
19 provide the vehicle radio with the received audio  
20 content; and

21 an advertising control unit connected to said  
22 radio broadcast receiver to receive at least some of  
23 the radio advertisements contained in the first  
24 radio broadcast stream, said advertising control  
25 unit including a recording device which stores  
26 radio advertisements received from said radio  
27 broadcast receiver;

28 wherein, upon receipt of one of the markers  
29 contained within the second broadcast stream, said  
30 advertising control unit is operable to access one of  
31 the stored radio advertisements, with the accessed  
32 radio advertisement being inserted into the  
33 advertising slot identified by the received marker  
34 so that the accessed radio advertising is included  
35 within the audio content sent to the input of the  
36 vehicle radio.

1       The Appellant is correct in contending (*see* App. Br. 9) that  
2       Dimitriadis fails to describe a system including an advertising control unit  
3       “operable to access one of the stored radio advertisements, with the accessed  
4       radio advertisement being inserted into the advertising slot identified by the  
5       received marker *so that the accessed radio advertising is included within the*  
6       *audio content sent to the input of the vehicle radio.*” (Italics added.) Even  
7       assuming that Dimitriadis’ amplifier 68 most closely corresponds to the  
8       vehicle radio recited in claim 26, Figure 2 of Dimitriadis depicts the audio  
9       content or voice signal 66 entering the amplifier 68 separately from the  
10      advertising content routed through the advertisement or message  
11      presentation block 104. At the very least, Dimitriadis fails to describe any  
12      inclusion of accessed radio advertisement with the audio content or voice  
13      signal 66 before the audio content is sent to the amplifier 68.

14      As the Appellant points out, this functional distinction implies a  
15      structural difference between Dimitriadis’ amplifier 68 and the vehicle radio  
16      recited in claim 26. Dimitriadis’ amplifier 68 requires an auxiliary input for  
17      receiving the accessed radio advertisement. The vehicle radio recited in  
18      claim 26 receives the accessed radio advertisement, albeit included within  
19      the audio content sent to the input of the vehicle radio, without requiring an  
20      auxiliary input for receiving the accessed radio advertisement. (*See* App. Br.  
21      9). “While it may often be true that the mere omission of an element  
22      together with its function does not produce a patentable invention, it may  
23      also be unobvious to omit an element while retaining its function.” *In re*  
24      *Edge*, 359 F.2d 896, 899 (CCPA 1966).

25      As the Appellant points out (*see* App. Br. 9), the Examiner’s  
26      motivation statements fail to mention any reason why one of ordinary skill

1 in the art might have incorporated into a radio system for a vehicle an  
2 advertising control unit “operable to access one of the stored radio  
3 advertisements, with the accessed radio advertisement being inserted into the  
4 advertising slot identified by the received marker so that the accessed radio  
5 advertising is included within the audio content sent to the input of the  
6 vehicle radio.” (*See, e.g.*, Ans. 10-11, 14-15 and 22-23). Even assuming  
7 that the Examiner is correct in finding that “Hite also discloses inserting  
8 advertisements into the broadcast stream at the marked locations and  
9 transmitting the combined data stream to the vehicle radio” (Ans.  
10 21)(underlining omitted), the Examiner has provided no reason why one of  
11 ordinary skill in the art familiar with the teachings of Dimitriadis and Hite  
12 might have had reason to modify Dimitriadi’s system so as to include the  
13 accessed radio advertising within the audio content sent to the input of an  
14 element corresponding to the recited vehicle radio.

15 We do not sustain the rejection of claims 26-42 under § 103(a) as  
16 being unpatentable over Dimitriadis and Hite. In view of this decision, we  
17 do not address any procedural issues relating to the rejection of claims 26-42  
18 in the wake of our Decision in *Ex Parte Pudar*, Appeal No. 2008-0410,  
19 mailed April 30, 2008.

20  
21 **DECISION**

22 We REVERSE the decision of the Examiner rejecting claims 26-42.

23  
24 **REVERSED**

25  
26  
27  
28 Klh